

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 973 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHANTILAL DEVJIBHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR RS PANJWANI for Petitioners

MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/12/98

ORAL JUDGEMENT

Admit. With the consent of learned advocate Mr. Panjwani appearing for the appellant and Mr. M.A Bukhari, the learned APP appearing for the State, this appeal is heard today.

2. This appeal has been preferred against the judgment and order dated 30th September, 1998 passed by the learned Addl. Sessions Judge, Vadodara in Atrocity Case No. 157 of 1995. On 6th October, 1995, the complainant Rameshbhai lodged a complaint at Daboi Police Station against the present appellants and two others in respect of injury caused by the accused to the complainant. The complainant being a person belonging to the Scheduled Tribe, an Atrocity case was registered against the four accused. The accused were charged for offences punishable under Sec. 323, 342, 504 and 114 IPC and Section 3 (1)(10) of the Scheduled Caste & Scheduled Tribe [Prevention of Atrocities] Act, 1989. The appellants were also charged for offence punishable under Section 135 of the Bombay Police Act. The learned Addl. Sessions Judge, Vadodara tried the accused. The accused nos. 3 & 4 were acquitted of all the charges for want of evidence against them. Accused Nos. 1 & 2 were also acquitted for the offence punishable under Section 3 (1)(10) of the Scheduled Castes & Scheduled Tribes [Prevention of Atrocities] Act, 1989 and Section 135 of the Bombay Police Act and for the offence punishable under Section 504 and 114 IPC. The offences punishable under Sections 323 and 342 IPC were held to be proved against the accused nos. 1 & 2. Both the accused have, therefore, been convicted of the offences punishable under Sections 323 and 342 IPC. For offence punishable under Section 323 both have been sentenced to suffer imprisonment for six months and a fine of Rs. 1000/=, in the event of default in payment of fine a further imprisonment of one month. For the offence punishable under Section 342 IPC both the accused have been sentenced to suffer rigorous imprisonment for one year and a fine of Rs. 1000/=; in default of payment of fine, a further imprisonment for three months. The facts leading to the conviction of the present appellants-accused nos. 1 & 2 are as under :-

2.1 On 6th October, 1995 a complaint was lodged in Daboi Police Station by complainant Rameshbhai as aforesaid. It was alleged that on 5th October, 1995, the complainant who is a member of the Scheduled Tribe and the resident of village Vayedpura had gone to nearby village Adlapura to watch Garba and had participated in a procession where some fire crackers were being played. At that time the accused Shantilal Devjibhai, Rajeshbhai Shankerbhai, Mohanbhai Trikambhai and Ganpatbhai Chhaganbhai stopped the accused and asked him not to play fire crackers. The complainant thereafter went to his house. The next day in the morning at around 8.00 O'clock accused no. 3 and accused no. 4 went to the

house of the complainant and offered him some liquor from there the complainant was taken to the court yard of Ramjibhai. There Accused no. 1 and accused no. 3 abused the complainant and tied him to a tree with a rope. All the four accused persons abused the complainant and the complainant was beaten by stick and hand blows. The complainant shouted for help and in answer to his call for help, one Chhatrasinh Jaisinh, Kanubhai Kalidas and Maganbhai went to his rescue and got him free from the accused. He, thereafter, went to the police station to lodge the complaint.

3. The medical evidence reveals that the complainant had consumed alcohol and that he was beaten and had received injuries which are enumerated in the medical certificate Exh. 25. The injuries suffered by the complainant were as under :-

- (i) Abrasion [grey style] on the left elbow joint;
- (ii) Inflammation & redness on arm
- (iii) Inflammation and redness on the middle of forehead;
- (iv) Contusion on left eye;
- (v) Tenderness on lower five ribs.

The prosecution has examined the complainant Rameshbhai [PW-1 at Exh. 11], Eye-witness Chhatrasinh Jaisinh [PW-2 at Exh. 13]; eye-witness Jayantilal Bhailalbhai [PW-3 at Exh. 14]; Panch witness Bhailalbhai Tribhuvandas [PW-4 at Exh. 15]; Police Station Officer Pratapsinh Rathod [PW-5 at Exh. 18]; Police Officer Bharatsinh [PW-6 at Exh. 21] and Doctor Mukul Kumar [PW-12 at Exh. 23]. The complainant PW-1 has proved the complaint Exh. 12. He stood by his complaint in so far as it concerns the incident that took place on 5th and 6th October, 1995 i.e., the complainant was admonished for playing firecrackers and that on the next day he was offered liquor and after consuming liquor, the complainant was taken to village Adlapura and was tied to a tree and was beaten by the accused. He, however, has not stated anything about his having been abused by the accused. In the cross examination also, he has stood by his testimony. PW-2 has deposed that he had heard shouts of the complainant and had gone to the Ramjibhai's court yard to rescue the complainant. All the four accused persons were present there and PW-1 was tied to the tree with the rope. That PW-3 and one Maganbhai had also come there and accused were beating PW-1. The said witness has stood by his testimony in the cross examination.

PW-3 too has supported the prosecution. He has stated that he had seen the PW-1 being brought to Ramjibhai's court yard. That accused no. 2 went to fetch the rope; that all the four accused tied the complainant to a tree and accused no. 1 and accused no. 2 had beaten the complainant; that on complainant's shouting for help, he and PW-2 and one Kanubhai had rushed to the spot and had freed the complainant. PW-4 has proved the panchnama Exhs. 16 & 17. PW-12, the medical officer, who had examined the complainant soon after the incident, has proved the medical certificate Exh. 25. He has deposed that the complainant had suffered injuries enumerated in the medical certificate. He has also stated that the complainant had consumed alcohol. That the injuries suffered by the complainant were superficial and that such injuries could have been suffered because of fall. The panchnama Exh. 16 shows that the grass under the tree was rumpled and there were signs of presence of many people under the tree. The muddamal sticks with which the complainant was alleged to have been beaten were recovered under panchnama Exh. 17.

4. The say of the complainant that he was tied to the tree and was beaten by accused no. 1 and accused no. 2 is supported by eye-witnesses PW-2 and PW-3. Both the witnesses PW-2 & PW-3 are residents of village Aadlapura. It is true that both these witnesses have said that the complainant was abused and that the accused had used offensive language which is not stated by the complainant himself. But in my view that alone would not make their testimony untrustworthy. Besides they had no reason to depose against the accused. Even the panchnama Exh. 16 supports the complainant's say that he was beaten under the tree. Though the medical officer Mukul Kumar has deposed that such injuries can be suffered by a fall, it does not rule out the possibility of the injuries having been inflicted by the accused. Besides, the complainant's evidence that he was beaten on the chest is supported by medical evidence of tenderness on lower five ribs. His evidence of having been beaten on the arm is supported by injury of abrasion on the left elbow zone and the inflammation and abrasion on the left arm. Thus, in my view, the prosecution has been able to prove that the complainant was tied to a tree in the Ramjibhai's Vada and was beaten by accused no.1 and accused no. 2 who are the appellants before this Court. I, therefore, confirm the conviction of accused nos. 1 & 2 ie., Shantilal and Rajeshbhai for offence punishable under sections 323 and 342 IPC.

5. Mr. Panjwani, learned advocate for appellants

has contended that considering the gravity of the offence proved against the accused and the injuries suffered by the complainant, the sentence imposed upon the appellants is excessive and requires to be reduced. He has further contended that the accused no. 2 Rajeshbhai is in military services and if convicted and sentenced, his service would be adversely affected. Besides, this being the first offence of both the appellants, they should be released on probation. In support of his contention, he has relied upon Section 360 and 361 CrPC and has submitted that it is the duty of the Court to explore the possibility of releasing the accused on probation. He has also submitted that even the appellate court can release the accused on probation. He has relied upon a judgment of the Supreme Court in the matter of Bishnu Deo Shaw v. State of West Bengal {AIR 1979 SC 964}. He has specifically relied upon para 25 of the judgment and has submitted that section 361 CrPC casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and, to state 'special reasons' if it does not do so. The 'special reasons' contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examination the matter with due regard to the age, character, antecedents of the offender and the circumstances in which the offence was committed. Mr. Panjwani has submitted that in view of these observations made by the Hon'ble Supreme Court and considering the nature of the offence committed by the appellants herein, they ought to be released on probation of good conduct.

6. I do agree that even the appellate court can release the accused on probation of good conduct, however, the question is whether in a given case the accused ought to be released on probation of good conduct or not. In the present case both the appellants were of around 30 years of age at the time of the incident. However, in my view, the circumstances in which the offence was committed and the way in which it was committed do not entitle the appellants to be released on probation of good conduct. First the complainant was beaten because though he was a tribal had participated in the religious procession and had played fire crackers. The accused went to the village of the complainant, offered him liquor and brought him back to their own village, tied him to a tree trunk and beat him. The intention of the accused to teach a lesson to the complainant is squarely established and such an attitude cannot be encouraged by the court.

7. However, it does appear that the complainant did

not receive severe injuries. The injuries suffered by him were superficial. There may not be any intention other than to teach a lesson to the complainant. Considering all these circumstances, the sentence imposed upon the appellants does appear to be excessive. The sentence imposed by the Court below is, therefore, modified to the following extent.

8. Both accused Nos. 1 and 2 i.e., Appellants before this Court are sentenced to suffer 3 months rigorous imprisonment for the offence punishable under Section 323 IPC. The sentence of fine and imprisonment in default of payment of fine is confirmed. For the offence punishable under Section 342 IPC, the accused nos. 1 & 2 - the appellants herein, are sentenced to suffer rigorous imprisonment for 4 months. The sentence of fine imposed and the imprisonment in default of payment of fine is confirmed. Both the sentence shall run concurrently. Appeal is allowed to the aforesaid extent. Both the appellants are given time upto 24-12-1998 to surrender.

Prakash*